

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BARRY MEHLER,

Plaintiff,

vs.

Case No. 1:22-CV-00071

Hon. Jane M. Beckering

Hon. Magistrate Judge Ray Kent

FERRIS STATE UNIVERSITY, DAVID L. EISLER, individually and in his official capacity as President of Ferris State University; RANDY CAGLE, individually and in his official capacity as Dean of Ferris State University's College of Arts, Sciences and Education; FERRIS STATE UNIVERSITY BOARD OF TRUSTEES; and AMNA P. SIEBOLD, ANNA L. RAMIREZ-SAENZ, RUPESH K. SRIVASTAVA, LASHANDA R. THOMAS, GEORGE K. HEARTWELL, KURT A. HOFMAN, and RONALD E. SNEAD, in their Official Capacities as Trustees of Ferris State University's Board of Trustees,

Defendants.

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DEFENDANTS' EXHIBIT 15
INTRODUCED AT HEARING ON 3/7/2002

Confidential Memo

TO: Miles Postema, Ferris State University

FROM: Stephanie Setterington, Varnum LLP



RE: Investigation Report – Mehler Video / Student Communications

DATE: March 4, 2022

I. BACKGROUND

Between January 9, 2022 and January 11, 2022, the University became aware, through several reports by students, parents, faculty, and community members, of a video Professor Barry Mehler had reportedly distributed to students enrolled in his classes and posted on YouTube that contained material considered by the reporting persons to be inappropriate and offensive. An investigation was initiated to determine the facts surrounding the video and Professor Mehler's communications to students, and whether any violation of University policy had occurred. On January 11, 2022, Professor Mehler was placed on paid administrative leave pending completion of the investigation.

II. SUMMARY OF COMPLAINTS

On January 9, 2022, faculty member Mark Hutchinson forwarded to his Department Head a video link that had been provided to him by a student who had enrolled in Professor Mehler's Michigan History Course for the Spring 2022 term.¹ Professor Hutchinson also provided the information to his Dean on or about January 10, 2022. Professor Hutchinson had concerns the video could present Title IX concerns based on the language used toward students. The information was forwarded to the Office of the General Counsel on January 12, 2022.

On January 9, 2022, Dee Stakely, Director of Office of Transfer and Secondary School Partnerships, received concerns from Ready for Life Instructor Sandra Baker and Ready for Life Executive Director Emily Purton regarding a Ready for Life student who had been enrolled in Professor Mehler's class.² The student and his parent were "very concerned about the language in the video and the video itself." Instructor Baker copied Stakely on correspondence she sent to Professor Mehler inquiring about the video and expressing that she was "disturbed by the content and profanity used." As a result of the video, the student requested to switch classes. Stakely also reported that a dual-enrolled high school student had been removed from Professor Mehler's class as a result of the video.³

¹ The student was [STUDENT 1].

² The student was [STUDENT 2].

³ The student was [STUDENT 3].

On January 10, 2022, Student [STUDENT 4] e-mailed Humanities Department Head Richard Scott Cohen regarding Professor Mehler's uploading of a video containing language that was "highly inappropriate" and "should not be used by a Ferris Professor." [STUDENT 4] referenced comments by Professor Mehler about students who showed up for in-person classes being "okay with killing our grandparents with COVID," about grades being predestined, and that "he did not care if we report him to the Dean or the administration." [STUDENT 4] expressed concern for his academic performance and concern for his fellow classmates registered in the course.

On January 11, 2022, Department Head of the College of Health Professions Sheila Maceachron reported to Director of Equal Opportunity Kylie Piette that a student had reported to her the student was upset about an inflammatory YouTube video by Professor Mehler. The student declined to be further involved unless necessary.⁴⁴ The student had dropped Dr. Mehler's course.

Thereafter, following the University's initiation of the investigation, additional communications from several sources, including students, parents, community members, and employees, were received by the University expressing concern over the video, and asserting the video and Professor Mehler's language used toward students was "offensive," "appalling," "abusive," "disgusting," "verbally assaultive," "vulgar," "abhorrent," and "shocking." Overall, the University received approximately 40 or more concerns by January 20, 2022.

III. SUMMARY OF THE RESPONSE

Professor Mehler, through counsel, submitted a demand for reinstatement on January 18, 2022. Professor Mehler asserted that the video was protected speech under the First Amendment. Professor Mehler asserted that the video was scripted and satirical, and was consistent with the same teaching style and content he had used for several years at the University with the University's knowledge and praise.

An interview of Professor Mehler was conducted at the outset of the investigation. In his interview, he maintained that the Dignity and Respect policy is vague and that he does not understand it, and that if the Dignity Policy "is telling me I cannot use profanity in my class. . . that policy is unconstitutional." Professor Mehler further stated that the portions of the video in which he used profane language or extreme content were a "soliloquy" in which he was not addressing such remarks to the students, but rather was giving a "performance" that the students were observing.

Professor Mehler stated that he had used the same approach and the same type of content, including presenting his class sessions as "the Show," including using the same "Deadwood" scene as a basis for his discussion of plagiarism, the same sort of discussion of a Calvinist grading system, the same use of Camel cigarettes as a sponsor, and same use of profanity, for years. Professor Mehler asserted that the University was fully aware of his practices, citing examples of the Distinguished Teacher Award Committee viewing his class, him giving public presentations, and him addressing his teaching methodology in his evaluation processes. Professor Mehler asserted that the video and his teaching style were matters of academic freedom.

⁴⁴ The student was [STUDENT 5].

IV. INVESTIGATION PROCESS AND EVIDENCE

A. Key documents reviewed:

1. January 9, 2022 Mehler Intro Video and transcripts of same
2. January 11, 2022 Notice of Paid Leave and Investigation
3. January 17, 2022 FIRE Letter
4. January 18, 2022 Demand for Reinstatement
5. January 18, 2022 Mehler correspondence to peers re reinstatement demand
6. Letters of support to FSU re Mehler January 9, 2022 Video
7. Letters of concern to FSU re Mehler January 9, 2022 Video
8. Documentation regarding student verbal concerns received by University personnel re Mehler January 9, 2022 Video
9. Documentation regarding Ready for Life student enrollee transferred from Mehler class
10. Documentation regarding Dual-Enrollment student transferred from Mehler class due to January 9, 2022 video
11. Documentation from Witness Sandy Baker regarding communications with Mehler re January 9, 2022 video
12. Mehler January 9, 2022 4:14:34 PM E-Mail to Michigan History Students re Week 1 Welcome & Assignments
13. Word document "Week 1 Assignments" (provided by Dr. Mehler in response to request for Welcome Message to Spring 2022 students)
14. Mehler script for January 9, 2022 Video
15. Nero Sympathy for the Devil Music Video Presented to Mehler Michigan History Class January 11, 2022
16. Spring 2022 Mehler Class Schedule
17. Spring 2022 Mehler Syllabi
18. Spring 2022 Mehler Course Drop / Add week of January 10, 2022

19. Passion for the Past Flyer
20. March 16, 2017 Letter from Distinguished Teacher Award Committee
21. 2016-2017 Distinguished Teacher Award Committee membership listing
22. Notes of Anne Spain re February 7, 2017 classroom observation for Distinguished Teacher Award consideration
23. Series of Mehler video recordings on Mehler YouTube Channel (21 videos posted as of February 27, 2022)
24. 2014 Mehler Merit Application
25. March 15, 2020 Mehler Post-Tenure Review
26. Mehler course evaluations 2014-2021
27. Mehler historical course syllabi 2014-2021
28. Rate My Professor documentation re Mehler
29. Provost file regarding prior issues/coaching to Mehler re classroom communications
30. E-mail communications re Mehler August 2021 remote work request
31. FSU Employee and Student Dignity Policy
32. FSU Student Complaint Policy
33. FSU Social Media Policy
34. FSU Mission, Vision, and Core Values
35. FFA Collective Bargaining Agreement Provisions
36. Verified Complaint and Attachments
37. Various news interviews provided by Mehler
38. FSU College of Arts, Sciences, and Education Org Chart

B. Witnesses interviewed:

1. Dr. Barry Mehler (January 27, 2022)

2. Dee Dee Stakely (February 4, 2022)
3. Mark Hutchinson (February 7, 2022)
4. Sandra Baker (February 7, 2022)
5. [STUDENT 1] (February 8, 2022)
6. Gary Maixner (February 9, 2022)
7. [STUDENT 6] (February 9, 2022)
8. [STUDENT 7] (February 10, 2022)
9. Anne Spain (February 10, 2022)
10. Stephanie Gustman (February 10, 2022)
11. [STUDENT 8] (February 11, 2022)
12. Grant Snider (February 11, 2022)
13. Monica Frees (February 11, 2022)
14. [STUDENT 9] (February 14, 2022)
15. Christopher DeFraia (February 16, 2022)

V. SUMMARY OF THE EVIDENCE

A. Professor Mehler Class Format

The evidence showed that Professor Mehler has a history of conducting at least some of his classes in an in-person format called "The Show" or "Sympathy for the Devil." The format involves darkening the room at the beginning of each class period and opening the class by playing the song "Sympathy for the Devil." Professor Mehler introduces Camel cigarettes as a fictitious sponsor of the show. He uses different personas in the show to communicate ideas related to the class content. He discusses Calvinism and describes a system of predestined grading he tells students he uses in his classes.

The evidence suggested that Professor Mehler moved away from this class format or some of the above elements of it in around 2017. Professor Mehler stated in his 2020 Post Tenure Review: "I have modified my presentation method since taking on the Shoah project. It was my feeling that the vulgar and ironic tone of 'The Show' was not compatible with the Shoah program. I couldn't run the Shoah and treat the past as a vulgar joke. . . I stripped away the musical introduction, the

advertisements for Camel cigarettes and the vulgarity. What I was left with were the core ideas behind my pedagogy."

In his interview, Professor Mehler stated that he pulled back from presenting his classes as "The Show" during the time period he was in charge of the Shoah Project. Review of available class materials and syllabi from the time period following Professor Mehler's transition of responsibility for the Shoah Project suggested that Dr. Mehler returned to use of Camel cigarettes as a sponsor, but did not otherwise reflect resumed use of The Show's prior elements.

B. COVID-19 and Class Delivery

In March 2020, the University transitioned to all remote coursework due to the COVID-19 pandemic. The Canvas system was introduced to facilitate online delivery of courses over the following months. Teaching continued to occur remotely over the following semesters, until the University decided to return to offering in-person classes in the Fall 2021 semester.

Since the University's return to offering traditional, in-person classes, faculty who are unable to work in person due to medical/disability concerns may be considered for remote only teaching as an accommodation under the University's ADA processes. Professors are otherwise assigned classes in the normal course, which may be in person, online, or a combination of sections offered in person and sections offered online.

C. Spring 2022 Mehler Classes and Video

In the current Spring 2022 semester, Professor Mehler was assigned to teach one section of his Genocide course and one section of his Michigan history course in online format, and two sections of U.S. History and one section of Michigan History in person.

On January 9, 2022, Professor Mehler sent a link to an intro video link to the students in all his classes, prompting the response described in the "Background" and "Summary of Complaint" section above.

D. Use of Profanity/Explicit Language

1. *In the January 9, 2022 Video:*

The video is approximately 14 minutes long. In it, Professor Mehler uses profanity in approximately 31 instances, including 18 instances of some variation of the word "fuck," six references to the word "cocksucker," two references to "limber dick," four references to the word "shit," and one reference to the word "asshole." Phrases include Dr. Mehler stating:

- "I want to introduce myself before we meet F2F, who, as we say these days, which everybody knows, means 'fuck to fuck.'"
- "Now I may have fucked up my life flatter than hammered shit, but I stand before you today beholden to no human cocksucker and working a paying fuckin union job."

- "And no limber dick cocksucker of an administrator is going to tell me how to teach my classes, because I'm a fucking tenured professor."
- "So if you want to go complain to your Dean, fuck you. Go ahead."
- "I'm retiring at the end of the year and I couldn't give a flying fuck any longer."
- "You people are just vectors of disease to me, and I don't want to be anywhere near you, so keep your fucking distance."
- "How the fuck am I going to get out of this course alive and with an 'A'?"
- "How does this asshole professor grade?"
- "It doesn't matter how fucking hard you work or how great your grades are."
- "It doesn't fucking matter whether you go to church or give charity."
- "None of you cocksuckers are good enough to earn an 'A' in my class, so I randomly assign grades before the first day of class."
- "I don't want to know shit about you."
- "And don't come fucking complaining to me."
- "So, when I look out at a classroom filled with 50 students, I see 50 selfish kids who don't give a shit whether grandpa lives or dies."
- "And if you won't expose your grandpa to a possible infection with COVID, then stay the fuck away from me."
- "If you don't give a shit whether grandpa lives or dies, by all means, come to class."
- "I will not take questions in class because I'm wearing this fucking helmet in order to stay alive."

Phrases also include Professor Mehler playing a video clip with the following language:

- "I'm descended from all of them cocksuckers."
- "I may have fucked up my life flatter than hammered shit, but I stand here before you today beholden to no human cocksucker. And workin' a payin' fuckin' gold claim. And not the U.S. government sayin' I'm trespassin' or the savage fuckin' red man himself or any of these limber dick cocksuckers passin' themselves off as prospectors had better try and stop me."

In his interview, Professor Mehler stated that the type of profanity he used during the video is part of his teaching style and consistent with the way he has conducted his classes for years. He further stated that, even with expressions such as "[s]o if you want to go complain to your Dean, fuck you. Go ahead," "[n]one of you cocksuckers are good enough to earn an 'A' in my class," "[s]o, when I look out at a classroom filled with 50 students, I see 50 selfish kids who don't give a shit whether grandpa lives or dies," he was not directing profanity to the students, but rather was giving a performance that they were observing.

Professor Mehler stated he uses profanity in his teaching because he feels it is important to create a moment of confusion to teach students how to think, and to think critically about what they think they know. When asked whether he could create such confusion without using profanity, he stated: "Why would I want to? They love it. It's what makes me a popular professor." Professor Mehler went on to note that he has full classes, and "it's not like I don't have any students."

The witnesses interviewed in the case understood Dr. Mehler's references to "you cocksuckers" and "50 selfish kids who don't give a shit," "fuck you," "stay the fuck away from me" and "if you don't give a shit whether grandpa lives or dies, by all means, come to class" to have been directed to them as the students in his class. Witnesses generally all described the profanity and nature of its use in the video to be "shocking," "unprofessional," and "disrespectful."

Student witness [STUDENT 8] stated she has had other professors who have sworn on occasion, and this has not bothered her, but that Professor Mehler's behavior was different because of the way it was directed toward the students. "I have never been called names" by any such professors. They have always addressed me in a respectful way.

Student witness [STUDENT 1] stated he found the profane words and epithets to be offensive. He was taken aback by them. He stated, "I am not a stranger to these words" but commented that if he were a freshman or a female, they might have a strong impact. [STUDENT 1] said he was offended because of the others who might be in the class and be subjected to the words. [STUDENT 1] stated that the word "cocksucker" seemed like it would be offensive to women or people of homosexual orientation. [STUDENT 1] was concerned that a professor, as a person with authority over the students, would use such references.

Student witness [STUDENT 9] stated that the vulgar language was to such an extent "I would not be able to deal with it, which is why I dropped the class. For as much as I knew he was going to stay the professor of the class, and if that was true, I wanted nothing to do with it." He said if he had not had an option to leave the class, conduct like Dr. Mehler's "would affect my ability to get an education at Ferris."

2. *In the January 11, 2022 Class Session:*

The investigation revealed evidence that Professor Mehler continued his reference to students as "cocksuckers" and use of other profanity in the classroom. Dr. Mehler described that, on the first day of classes, he entered the classroom and joked: "So you're the cocksuckers who don't give a shit about grandpa." Witness [STUDENT 9] described that Professor Mehler stated: "So one of you cocksuckers sent out the link" or similar phrase with the word "cocksucker."

In addition, [STUDENT 9] described the Nero "Sympathy for the Devil" music video presented by Dr. Mehler on the first day of class. The video was also reviewed in the investigation. The video contained sexually suggestive or explicit content including scenes from a strip club depicting women:

- Dancing on stage wearing only lingerie or bikinis
- Pole dancing for patrons in stockings and scant clothing
- Giving a lap dance to a male patron while topless (back visible only)

[STUDENT 9] described the content as including women in very skimpy bikinis and in parts of the video "working the pole." [STUDENT 9] stated he felt very uncomfortable with this video content. He stated he has certain religious views about modesty and women, and the women were not dressed appropriately. [STUDENT 9] stated: "I pretty much kept my head down" during the video because he did not want to see that. [STUDENT 9] stated he personally would describe those parts of the video as "sexually explicit," but they were at a minimum highly suggestive. [STUDENT 9] stated: "For me and how I want to view the world, the material was not appropriate" [STUDENT 9] stated the material was "unprofessional" and "disrespectful."

E. Calvinism/Grading Discussion

In the video, Professor Mehler described Calvinism and his grading policy in this way:

Here's how Calvin saw the universe: Calvin believed that a person was either predestined for salvation or damnation. Most people were chosen for damnation, and that because all human beings are sinners damned by their own ugly souls. But despite how disgustingly ugly your soul might be, God in his infinite mercy has chosen – at random, I might add – a few individuals for salvation. These people are saved by grace alone, not by any righteous actions that they may have performed. It doesn't fucking matter whether you go to church or give charity. Your actions don't count. Nobody earns salvation because nobody is that good. And that is why in my –that's the way it is in my class. I figure, if it was good enough for Calvin, it's good enough for me. None of you cocksuckers are good enough to earn an "A" in my class, so I randomly assign grades before the first day of class. I – I don't want to know shit about you. I don't even want to know your name. I just look at the number, and I assign a grade. That is how predestination works. And don't come fucking complaining to me. Take your complaints to God. He ordained this system, not me.

In his interview, Professor Mehler stated that his discussion and use of Calvinism is based on the significance the doctrine has had on U.S. history. He further stated he wants students to think about the doctrine, and how a comparable approach to grading would impact them. Professor Mehler stated he was not being serious about using a Calvinist grading system, and cited other portions of the video on the treatment of grading in the syllabus as clear indicators he was not serious. Professor Mehler further stated this section of the video was also a soliloquy and he was

not actually speaking to the students about these materials, but rather was giving a performance that the students were observing.

Student witnesses interviewed in the investigation understood Dr. Mehler's references to "you" in the above discussion to be referring to them. Further, one such witness construed Professor Mehler to be openly mocking Calvinism, which is a religious doctrine to which he adheres. Witness [STUDENT 9] stated that he understood Professor Mehler may be trying to make students think, "but his comments about Calvinism mocked and belittled a school of thought." [STUDENT 9] stated, "I don't care if it is Buddhism, Jainism, or another school of thought," it is disrespectful to mock and belittle in that way. [STUDENT 9] stated that such matters should be treated with thought. [STUDENT 9] stated that the discussion of Calvinism "was offensive to me." [STUDENT 9] stated he was familiar with the point Professor Mehler was trying to make, but that Professor Mehler was building a "straw man" he could discredit and "was being extremely crass in doing so." [STUDENT 9] stated: "As someone who holds to this belief, I am more than willing to be challenged or pushed on it academically to see it differently. . . but I do not need it mocked. In my opinion, it was being mocked."

[STUDENT 9] stated that, if he had not had an option to leave the class, conduct like Dr. Mehler's "would affect my ability to get an education at Ferris."

F. COVID and In-Person Attendance

In the video segments regarding in-person attendance and COVID, Professor Mehler stated, "You people are just vectors of disease to me, and I don't want to be anywhere near you, so keep your fucking distance. If you want to talk to me come to my Zoom." He also stated, following discussion of a letter to the editor regarding COVID and Clemson University's return to in-person attendance, and paralleling that situation to that at Ferris:

Listen up folks, I'm old enough to be your grandpa, and you people are vectors of disease to me. So, when I look out at classroom filled with 50 students, I see 50 selfish kids who don't give a shit whether grandpa lives or dies. And if you won't expose your grandpa to a possible infection with COVID, then stay the fuck away from me. If you don't give a shit about whether grandpa lives or dies, by all means come to class.

Now, before any of you go running to complain – and it happens every semester – "Dr. Mehler said we shouldn't come to class - Dr. Mehler says we shouldn't come to class" let me clarify my attendance policy to you. First, let me explain that professors have complete discretion with regard to attendance policy. Some professors, for example, allow three unexcused absences while other professors do not take attendance – require attendance at all.

My classes are all designed to be taught remotely, and everything you need to earn an "A" is available to you on our Canvas page. There is no benefit whatsoever from coming to class. I will not take questions in class because I'm wearing this fucking helmet in order to stay alive. So please, come to class, Enjoy the show. I'll be there regularly because I have no choice. You, on the other hand have a choice.

In his interview, Professor Mehler again stated this part of the video was a performance, and was not actually directed to the students. Dr. Mehler acknowledged that the views he expressed about teaching in person were consistent with his personal views, including that students are "vectors of disease" and that he does not want to be anywhere near them because "he does not want to die." Professor Mehler stated that he had requested the opportunity to continue work remotely when the University made the decision to return to in-person classes, but that he chose not to undergo the ADA interactive process the University informed him would need to be completed in order for his request to be considered. Professor Mehler seemed to vacillate on the point, but indicated he was not literally telling students not to come to class. He stated he walked into a full classroom on Tuesday, so he presumed most people did not take him seriously.

Professor Mehler was uncertain whether he had used the same language in previous presentations of the "Deadwood" soliloquy: "If you want to go complain to your Dean, fuck you. Go ahead." He acknowledged that the remainder of that soliloquy, in which he stated, "I am retiring at the end of this year, and I couldn't give a flying fuck any longer. You people are just vectors of disease to me and I don't want to be anywhere near you, so keep your fucking distance. If you want to talk to me, come to my Zoom," was new and had not been presented previously. Professor Mehler acknowledged that later discussion of COVID and in-person attendance was also new and had not been part of his performance in prior years.

Students interviewed in the investigation interpreted Professor Mehler in the video to be speaking to them with regard to many of the comments he made concerning COVID and in-person attendance, including the references, "If you want to go complain to your Dean, fuck you. Go ahead"; "You people are just vectors of disease to me and I don't want to be anywhere near you"; "when I look out at classroom filled with 50 students, I see 50 selfish kids who don't give a shit whether grandpa lives or dies"; "If you won't expose your grandpa to a possible infection with COVID, then stay the fuck away from me"; and "If you don't give a shit about whether grandpa lives or dies, by all means come to class," to be addressed to them. Student witnesses interpreted Professor Mehler's overall discussion of the issue to be a communication from him that he did not want them to attend his class in person.

Review of the letters of support and letters of complaint the University received concerning Professor Mehler revealed that a substantial number of people construed the video discussion of these topics to be a literal communication by Professor Mehler to the students to discourage them from attending his class in person.

G. The Video as Compared to Professor Mehler's Previous Observed Presentations

Investigation was conducted to evaluate Professor Mehler's assertion that the content and language of his January 2022 presentations were the same as what he had presented for years, and was known to the University. In particular, members of the Distinguished Teacher Award Committee were interviewed regarding the extent of similarity between the video and previous observations of Professor Mehler's class. Professor Mehler was also requested to provide any scripts or recordings of previous class sessions. The available evidence suggested that, while Professor Mehler's prior classroom presentations that were observed by other University personnel may have

included some instances of profanity/explicit language, such instances were not comparable to the extreme extent of that used in the video. For example:

- The notes of witness Anne Spain, who observed Professor Mehler's class as part of his consideration for the Distinguished Teacher Award, indicate he dropped "1-2 F-bombs" during the class.
- Witness Grant Snider, who was formerly Professor Mehler's Department Head, stated that he did not recall any discussion of profanity in the classroom observation of Professor Mehler in connection with the Distinguished Teacher Award nomination. He also stated he observed classroom presentations of "The Show" during the 2010 time period in the course of counseling/coaching Professor Mehler in response to a student concern, and did not observe use of profanity by Professor Mehler. Snider stated he had viewed the January 9, 2022 full video, and "I had never seen the level of profanity before" in Dr. Mehler's presentation. Snider clarified that he did not remember seeing any such profanity and likely would remember it if he had.
- Approximately 15 recorded classroom video presentations on Professor Mehler's YouTube channel, from the period between September 23, 2020 to December 19, 2022, were reviewed. Only approximately 3 relatively mild references to "hell" or "damn" were identified in the multiple hours of video recording.
- In Dr. Mehler's March 2020 Post-Tenure Review submission, he stated: "I have modified my presentation method since taking on the Shoah project. It was my feeling that the vulgar and ironic tone of 'The Show' was not compatible with the Shoah program. I couldn't run the Shoah and treat the past as a vulgar joke. . . I stripped away the musical introduction, the advertisements for Camel cigarettes and the vulgarity. What I was left with were the core ideas behind my pedagogy."

While the evidence did not confirm Professor's Mehler's assertion that his January 9, 2022 video presentation was the same as previous known activity by him in terms of his use of profanity, it did confirm that Professor Mehler's teaching methods included use of some course language, and included Professor Mehler giving classroom performances or assignments that at times generated concerns or complaints by some students. Witness Monica Frees described that she is an advisor, and has had students who have enjoyed Professor Mehler's class but also several students who have been offended by Professor Mehler's approach and asked about reporting complaints against him. Frees stated she informed the students of their options, and she believes many may have simply withdrawn from the class.

While this investigation did not attempt to consider such prior, informal concerns by students as policy violations within the scope of the current inquiry, the University's response to such situations reveals information relevant to an understanding of whether Professor Mehler was aware of the potential for misinterpretation of his approach, which is relevant to evaluation of his January 2022 activities. In responding to concerns that were raised in prior instances, University personnel informed Professor Mehler of the concerns, and offered him coaching to provide clearer cues to students as to when he was "in character" and when he was speaking his thoughts and opinions.

Records indicate, and former Department Head Grant Snider described, that he had given such guidance to Professor Mehler.

For a time, Professor Mehler appeared to adopt some practices that would inform incoming students of the unusual format and content of his show. For example, apparently beginning around the Summer 2014 term, Professor Mehler began including content in his syllabi such as:

- "In Dr. Mehler's classes, there is the added problem of figuring out what is real from what is not. . . ." "Over the years students have decided that Dr. Mehler has some hidden motive and he isn't really trying to get students to smoke cigarettes, which everyone knows is unhealthy."
- To put the matter simply, the student is never absolutely certain what Dr. Mehler really thinks, because the student only sees Dr. Mehler in performance, during which he takes on many identities and sells many ideas, all of them with equal conviction.
- **Trigger Warning:** Dr. Mehler takes on many personas, some of them are racist and some of them are sexist. As a result, Dr. Mehler uses profanity and what are ordinarily unacceptable racial and gender slurs. It is important for students to understand that Dr. Mehler is never expressing his "own" opinions in class. He is always performing and always presenting the opinions of others. In discussing Jim Crow the "n" word is inevitable. In fact, it is essential for the student to understand the power of words to define reality, and since profanity was so much a part of the American frontier, the mining camps, sea ports, and urban centers, a student who is easily offended ought to take another class or come and talk to me. I may be able to make some accommodation to individual sensibilities . . . If you need to have clear instructions and an orderly presentation, this class is going to be very frustrating for you.
- **Predestination:** Please note: This class stresses thinking more than learning, and the grading system, like the rest of the course, confronts the student with information that cannot be taken at face value.
- Dr. Mehler presents ideas that are not his own. It is up to you to decide if Dr. Mehler is serious when he urges you to "take the Camel's" challenge. And if he is not serious, what are the commercials about?
- **Trigger Warning:** If you need a trigger warning, this class is not for you!
- **Dr. Mehler represents ideas that are not his own. Dr. Mehler is a performer, the words that he speaks are not his own, so keep in mind that he is acting. It is up to you to decide on the significance of his performance or of any particular soliloquy that you may hear. Thus, when Dr. Mehler introduces himself by saying "I may have fucked up my life flatter than hammered shit," he is speaking words composed by David Milch, the author and producer of the HBO series, Deadwood.**

Professor Mehler appears to have discontinued most use of these types of explanations or content warnings by the Fall 2017 semester. He continued to caution students in his Genocide course regarding the disturbing content and potential for trauma based on the subject matter.

In his interview, Professor Mehler stated that his use of any "trigger warning" or "content warning" in his syllabi was only included as a joke and not a serious effort to warn students of the content of his classes. He recounted that, on one instance in which he gave a live performance, he stated at the outset: "If you need a trigger warning, get the fuck out now." Dr. Mehler claimed his references in his syllabi were similar.

VI. RELEVANT POLICY PROVISIONS

Review was undertaken of various policies the content of which could be informative as to various aspects of the investigation. Highlights of such review included the following.

A. The University's policy on Employee and Student Dignity (Subpart 8-7) states, in relevant part:

The University expects all students and employees to conduct themselves with dignity and respect for students, employees and others. **It is each individual's responsibility to behave in a civil manner and to make responsible choices about the manner in which they conduct themselves.** Harassment of any kind, including sexual harassment, racial harassment, or harassment based upon any status protected from discrimination under the Policy on Non-Discrimination or State or federal law, is not acceptable at the University. The University does not condone or allow harassment of others, whether engaged in by students, employees, or by vendors or others doing business with the University. **Harassment is the creation of a hostile or intimidating environment in which verbal or physical conduct, because of its severity or pervasiveness, is likely to significantly interfere with an individual's work or education, or adversely affect a person's living conditions.**

(emphasis added)

The University's procedures accompanying this policy provide further definition of prohibited harassment, specifying that offensive conduct based on one's protected characteristics is prohibited under the policy. For example, the procedures states:

Definition of Racial Harassment.

Racial harassment includes any conduct, physical or verbal, that victimizes or stigmatizes an individual on the basis of race, ethnicity, ancestry, or national origin. Such behavior could involve any of the following.

1. The use of physical force or violence to restrict the freedom of action or movement of another person or to endanger the health or safety of another person;

2. Physical or verbal conduct, intentional or otherwise, that has the purpose or effect of (or explicitly or implicitly threatens) interference with an individual's personal safety, academic efforts, employment, or participation in University-sponsored activities; or
3. Conduct that has the effect of unreasonably interfering with an individual's work or academic performance, or of creating an intimidating, hostile, or offensive working, learning or living environment.

Definition of Sexual Harassment.

Based on the definition contained in the Equal Employment Opportunity Commission guidelines, sexual harassment is defined as any of the following:

1. Making submission to unwelcome sexual advances, submission to requests for sexual favors, or submission to other verbal or physical conduct of a sexual nature, a term or condition, either implicitly or explicitly, of any person's continued employment or association with the University;
2. Making submission to, or rejection of, such conduct or communication, a factor in employment decisions affecting any person; or
3. Unwelcome verbal or other conduct that has the purpose or effect of substantially interfering with a person's working conditions or that creates an intimidating, hostile or offensive work environment.

Other Types of Harassment.

The attributes of racial harassment described in paragraphs I-(A), (1-3) above are also the attributes of most other types of harassment. Harassment may be based upon a person's status that is protected by law (e.g., religion, veteran status, disability, etc.) or may be based on some other reason not specifically covered by law. In any event, harassment of any type is not acceptable at the University.

B. The University's Student Complaint Policy states, in relevant part:

"Students are encouraged to resolve concerns informally themselves by first talking directly with the University representative involved.

...

If a student does not want to personally or directly contact a University employee, to discuss a complaint, they may contact the person in the next highest level of

authority, which would commonly be the supervisor (department chair, director, dean, associate vice president/provost).

...

This policy does not apply to complaints regarding unlawful discrimination, sexual harassment, and other misconduct allegations."⁵

C. The University's Social Media Policy states, in relevant part: "This policy only applies to employees who officially represent the University on official University sites."

D. The University's Mission Vision, and Core Values states, in relevant part:

"Diversity: Ferris commits to be an inclusive university community that respects the dignity of the individual and promotes the acceptance of others.

...

Ethical Community: Ferris implements policies, procedures, and action to promote transparency, advance our mission and foster integrity, civility, and respect within and beyond the university."

E. The FSU-FFA Agreement Section 4.1 (Discipline) states, in relevant part:

"Discipline

... The Employer and the FFA recognize a mutual responsibility for promoting professional conduct that encourages quality in the educational process, thereby reflecting favorably upon the University. Breaches of professional conduct, as differentiated from incompetence, are subject to discipline including, but are not limited to: abuse of sick leave and other leaves, excessive tardiness, willful deficiencies in professional conduct and/or performance, violation of Employer policies, regulations and administrative directions not inconsistent with the terms of this Agreement, and violation of the terms of this Agreement. Alleged breaches of professional conduct shall be reported promptly to the offending Member."

F. The FSU-FFA Agreement Section 7.4 (Academic Freedom) states, in relevant part:

"Members are entitled to academic freedom in the classroom in discussing their assigned subjects and disciplines, and should alert their students to the various scholarly views related to those subjects, and avoid presenting totally unrelated material.

⁵ The policy directs that such concerns be reported to the Director of Equal Opportunity (for matters involving employees) or the Title IX Coordinator (for sexual misconduct involving students, guests, volunteers, etc.).

...

The concept of [academic] freedom should be accompanied by an equally demanding concept of responsibility. When members speak or write as citizens, they should be free from institutional censorship or discipline. They should at all times make every effort to be accurate, exercise appropriate restraint, show respect for the opinions of others, and indicate that they are not an institutional spokesperson.

...

The above shall be construed that no limitations shall be placed upon study, investigation, presenting and interpreting facts and ideas concerning human society, the physical and biological world, and other branches of learning subject to accepted standards of professional responsibility. The right to academic freedom herein established shall include the right to support or oppose political causes and issues so long as that recognized right shall not be brought to bear on instructional activities."

VII. FINDINGS

The investigation first involved factual findings as to the conduct at issue. Such factual findings were reviewed against potentially applicable policies and codes to evaluate whether a violation of any handbook policy or applicable code provision was substantiated. Specific factual findings are set forth with respect to contested, primary alleged material behaviors and events.

A. Factual Findings

While the investigation findings were based on the evidence as a whole, the evidence gathered in the investigation supports the following key factual findings by a preponderance of the evidence:

- Professor Mehler issued a video to his classes on January 9, 2022 that was prolific in terms of the profanity it contained.
- The profanity, including expletives such as "fuck you," "stay the fuck away from me," "none of you cocksuckers," and the like, was reasonably construed as being directed toward the students in the class, and reasonably construed as being disrespectful.
- Several students and other recipients of the video were reasonably offended by the content.
- Professor Mehler continued his use of the profane terminology in his January 11, 2022 classroom session.

- Ferris State University classrooms are not public forums, because only enrolled students are allowed to attend.
- Professor Mehler repeatedly used several expletives that would reasonably be considered offensive on the basis of sex or sexual orientation, such as "cocksucker," "limber-dick" and various iterations of "fuck."
- Professor Mehler showed a music video during the January 11, 2022 class session that displayed sexually suggestive or explicit content, which was offensive to some students.
- Professor Mehler's discussion of Calvinism and predestination was intermingled with expletives, and presented in a manner that was reasonably considered to be "mocking" to the doctrine, and was reasonably considered by at least one student to be offensive on the basis of his religion. The offensiveness was such that it would have affected the student's ability to obtain an education at Ferris if he had remained subjected to it.
- Professor Mehler's personal statements about COVID-19 and returning to in-person learning were reasonably construed by several students to be directed toward them and to be intended to discourage them from attending the in-person class for which they had registered.
- The profanity was not germane to any class subject matter being addressed.

B. Policy Findings

Based on the factual findings above, the evidence supports a conclusion that Professor Mehler's conduct violated the Employee Policy on Employee and Student Dignity, which states: "The University expects all students and employees to conduct themselves with dignity and respect for students, employees and others. It is each individual's responsibility to behave in a civil manner and to make responsible choices about the manner in which they conduct themselves. Harassment of any kind, including sexual harassment, racial harassment, or harassment based upon any status protected from discrimination under the Policy on Non-Discrimination or State or federal law, is not acceptable at the University."

Dr. Mehler's conduct included making statements and presenting material that was sexually explicit and reasonably construed as derogatory or offensive on the basis of sex or sexual orientation. Such information and commentary was not germane to the topics he was assigned to teach. Likewise, Professor Mehler's profanity-laced, mocking treatment of the doctrine of Calvinism was reasonably offensive to at least one enrolled student on the basis of religion.

The focus of harassment under the policy is conduct that has the purpose or effect of offending, meaning that Professor Mehler's claim that he was not intending to offend anyone was beside the point. Further, Dr. Mehler's own previous experiences with students who were offended by his class content underscores that Dr. Mehler had notice that such content was likely to be construed in such a way, particularly with no cautionary instruction ahead of time.

The conduct at issue does not fall within the protections of academic freedom. The CBA defines how that doctrine is applied at the University. The doctrine does not extend to the presentation of materials that are totally unrelated to assigned course topics, outside the scope of accepted standards for instruction, nor does it allow the disrespectful treatment of others. Academic freedom is subject to the exercise of responsibility in its use, to appropriate restraint, and to respect for others.

Here, much of Professor Mehler's commentary bore no relation to the topics of his classes, was disrespectful, and appeared to be a direct effort to interfere with regular classroom activities, specifically the in-person participation in classes designed to be conducted in that fashion. The evidence did not support that presentations similar to the January 9, 2022 video had been known and accepted by the University in the past. Rather, the January 9, 2022 video appears to have taken Dr. Mehler's approach to an entirely different level, apparently in furtherance of his personal interest in avoiding in-person instruction.

VIII. CONCLUSION

Thank you for the opportunity to assist with this investigation. If further information or discussion is desired concerning any of the above information, please do not hesitate to contact me.

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